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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/627,157

07/25/2003

Darrell S. Keith

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04/27/2006

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EXAMINER

NEGRON, ISMAEL

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

**Office Action Summary**

Application No.

10/627,157

Applicant(s)

KEITH ET AL.

Examiner

Ismael Negron

Art Unit

2875

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/25/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed on May 24, 2005 has been entered. Claim 2 has been amended. No claim has been cancelled. Claims 23 and 24 have been added. Claims 1-24 are still pending in this application, with claims 1-3, 19, 23 and 24 being independent.

### ***Allowable Subject Matter***

2. The indicated allowability of claims 2, 10, 12-16, 18 and 19 is withdrawn in view of the newly discovered reference(s) to KONRAD (as detailed in sections 6-23 above). Rejections based on the newly cited reference(s) follow.

### ***Abstract***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The

abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

3. The abstract of the disclosure is objected to because it refers to purported merits or speculative applications of the invention, and uses legal phraseology. Correction is required. See MPEP § 608.01(b).

4. The Examiner respectfully suggests amending the abstract as follows.

An illuminated fishing rod, ~~suitable~~ for night fishing, ~~comprising~~ **including** a hollow core and a light source positioned within one end of the hollow core ~~and the~~ **for directing** light waves ~~from the light source being directed~~ towards the opposite end of the hollow core. The light waves are directed ~~external to~~ **towards** the rod's **exterior** by various means including a tapered hollow core, light refractors and other abrasions. The power source for the light source can be located internal to a handle portion.

***Specification***

5. The disclosure is objected to because of the following informalities: lines 17 and 18 of page 12 should read "The power source 31 in the illustrated embodiment is provided by one or more dry cell batteries 34, such as conventional AA batteries, aligned in end-". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 11, 12 and 14-24 are rejected under 35 U.S.C. 102(b) as being anticipated by KONRAD (U.S. Pat. 5,347,741).

7. KONRAD discloses an illuminated fishing pole having:

- **a translucent rod (as recited in claims 3 and 19), Figure 3, reference number 10;**
- **the rod including a base (as recited in claims 3 and 19), Figure 3, reference number 28;**
- **the rod including a tip end (as recited in claims 3 and 19), Figure 3, reference number 20;**

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- **the rod having a hollow core (as recited in claims 3 and 19),**  
Figure 3, reference number 16;
- **a light source (as recited in claims 3 and 19),** Figure 4, reference number 60;
- **the light source being located generally within the hollow core (as recited in claims 3 and 19),** as seen in Figure 3;
- **the light source being located substantially near one end of the hollow core (as recited in Claim 3),** as seen in Figure 3;
- **the light source being positioned in such a way as to direct light waves toward the opposite end of the hollow core (as recited in Claim 3),** as evidenced by Figure 3;
- **the hollow core being tapered from the base to the tip end (as recited in Claim 4),** as seen in Figure 3;
- **the light source being located generally near the base end (as recited in Claim 4),** as seen in Figure 3;
- **a power supply (as recited in Claim 5),** Figure 3, reference number 44;
- **the power supply being for powering the light source (as recited in Claim 5),** inherent;
- **means for controlling the intensity of the light source (as recited in Claim 5),** Figure 5, reference number 86;
- **the rod including an opaque material (as recited in Claim 11);**

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- **the opaque material covering portions of the translucent rod (as recited in Claim 11), column 5, lines 10-12;**
- **the opaque material controlling the illumination of the translucent rod (as recited in Claim 11), inherent;**
- **the opaque material being applied to the translucent rod in a manner creating a gradient pattern for the selective illumination of the rod (as recited in claims 12 and 18), inherent, as evidenced by column 5, lines 51-67;**
- **at least one light refractor (as recited in claims 14 and 22), Figure 4, reference number 92;**
- **the refractor being located within the hollow core (as recited in Claim 14), as seen in Figure 3;**
- **the refractor operating to refract light waves to the exterior of the rod (as recited in claims 14 and 22), inherent;**
- **the refractor being mounted at an angle (as recited in Claim 15), as seen in Figure 3;**
- **the refractor being mounted substantially perpendicular to the walls of the hollow core (as recited in Claim 16), as seen in Figure 3;**
- **the translucent rod being substantially transparent (as recited in Claim 17), column 4, line 28;**

- **the rod being partially coated with an opaque layer in proximity to the light source (as recited in Claim 18), column 5, lines 51-67;**
- **means for refracting the light waves from the light source (as recited in Claim 19), Figure 4, reference number 92; and**
- **the means refracting the light waves in such a way as to cause light waves to exit the translucent rod (as recited in Claim 19), as evidenced by Figure 3.**

8. Method claims 1, 2, 23 and 24 are considered as inherently disclosed by the patented structure of RONRAD (as detailed above).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over KONRAD (U.S. Pat. 5,347,741) in view of EDELSON (U.S. Pat. 3,800,136).
10. KONRAD discloses an illuminated fishing pole having:



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- **a translucent rod (as recited in Claim 3), Figure 3, reference number 10;**
- **the rod including a base (as recited in Claim 3), Figure 3, reference number 28;**
- **the rod including a tip end (as recited in Claim 3), Figure 3, reference number 20;**
- **the rod having a hollow core (as recited in Claim 3), Figure 3, reference number 16;**
- **a light source (as recited in Claim 3), Figure 4, reference number 60;**
- **the light source being located generally within the hollow core (as recited in Claim 3), as seen in Figure 3;**
- **the light source being located substantially near one end of the hollow core (as recited in Claim 3), as seen in Figure 3;**
- **the light source being positioned in such a way as to direct light waves toward the opposite end of the hollow core (as recited in Claim 3), as evidenced by Figure 3;**
- **the hollow core being tapered from the base to the tip end (as recited in Claim 4), as seen in Figure 3;**
- **the light source being located generally near the base end (as recited in Claim 4), as seen in Figure 3;**

- **a power supply (as recited in Claim 5), Figure 3, reference number 44;**
- **the power supply being for powering the light source (as recited in Claim 5), inherent;**
- **means for controlling the intensity of the light source (as recited in Claim 5), Figure 5, reference number 86;**
- **a handle (as recited in claims 6 and 7), Figure 3, reference number 28;**
- **the handle having an end portion (as recited in claims 6 and 7), Figure 3, reference number 36;**
- **the means for controlling the intensity being recessed within the end portion of the handle (as recited in claims 6 and 7), as seen in Figure 5; and**
- **the means for controlling the intensity being operable to adjust the illumination of the light source (as recited in claims 6 and 7), column 5, lines 3-8.**

11. KONRAD discloses all the limitations of the claims, except:

- the means for controlling the intensity of the light source including a potentiometer (as recited in claims 6 and 7); and
- the means for controlling the intensity being operable to adjust the illumination of the light source at various levels between ON and OFF (as recited in Claim 7).

12. EDELSON discloses an adjustable light intensity circuit for battery power light sources, such circuit having:

- **a light source (as recited in Claim 3), Figure 2, reference number 12;**
- **a battery power source (as recited in Claim 5), Figure 2, reference number 13;**
- **means for controlling the intensity of the light source (as recited in Claim 5), as seen in Figure 2;**
- **the means for controlling the intensity of the light source including a potentiometer (as recited in claims 6 and 7), Figure 2, reference number 14; and**
- **the means for controlling the intensity being operable to adjust the illumination of the light source at various levels between ON and OFF (as recited in Claim 7), column 1, lines 63-67.**

13. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to include the means for controlling the intensity of the light source of EDELSON in the illuminated fishing pole to be able to adjust the intensity of the light source to a desired level, as per the teachings of EDELSON.

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14. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over KONRAD (U.S. Pat. 5,347,741).

15. KONRAD discloses an illuminated fishing pole having:

- **a translucent rod (as recited in Claim 3), Figure 3, reference number 10;**
- **the rod including a base (as recited in Claim 3), Figure 3, reference number 28;**
- **the rod including a tip end (as recited in Claim 3), Figure 3, reference number 20;**
- **the rod having a hollow core (as recited in Claim 3), Figure 3, reference number 16;**
- **a light source (as recited in Claim 3), Figure 4, reference number 60;**
- **the light source being located generally within the hollow core (as recited in Claim 3), as seen in Figure 3;**
- **the light source being located substantially near one end of the hollow core (as recited in Claim 3), as seen in Figure 3;**
- **the light source being positioned in such a way as to direct light waves toward the opposite end of the hollow core (as recited in Claim 3), as evidenced by Figure 3;**
- **the hollow core being tapered from the base to the tip end (as recited in Claim 4), as seen in Figure 3;**

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- **the light source being located generally near the base end (as recited in Claim 4), as seen in Figure 3;**
- **a power supply (as recited in Claim 5), Figure 3, reference number 44;**
- **the power supply being for powering the light source (as recited in Claim 5), inherent;**
- **means for controlling the intensity of the light source (as recited in Claim 5), Figure 5, reference number 86;**
- **a handle (as recited in claims 6 and 7), Figure 3, reference number 28;**
- **the handle having an end portion (as recited in claims 6 and 7), Figure 3, reference number 36;**
- **the means for controlling the intensity being recessed within the end portion of the handle (as recited in claims 6 and 7), as seen in Figure 5;**
- **the means for controlling the intensity being operable to adjust the illumination of the light source (as recited in claims 6 and 7), column 5, lines 3-8;**
- **a reflective surface (as recited in claim 9), Figure 4, reference number 54**
- **the light source being mounted within the reflective surface (as recited in Claim 9), as seen in Figure 4;**

- **the reflective surface being for focusing the light waves toward the tip end (as recited in Claim 9), as evidenced by Figure 4;**
- **the reflective surface being a concave member (as recited in Claim 10), as seen in Figure 4; and**
- **the concave member including a layer to concentrate the light waves within the hollow core (as recited in Claim 10), inherent.**

16. KONRAD discloses all the limitations of the claims, except:

- the light source being a light emitting diode (as recited in Claim 8);
- the reflective surface including a layer of electroplated nickel (as recited in Claim 10).

17. The examiner takes Official Notice that the use of LEDs is old and well known in the illumination art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute an LED for the light source in the system of KONRAD. One would have been motivated since LEDs are recognized in the illumination art to have many desirable advantages, including reduced size, high efficiency, low power consumption, long life, resistance to vibrations, and low heat production, over other light sources.

18. Regarding the reflective surface including a layer of electroplated nickel (as recited in Claim 10), the applicant is advised that, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re*

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*Schreiber*, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). In this case, KONRAD discloses a reflective surface for concentrating the light waves within the hollow core (as recited in Claim 10), the process by which such reflective surface is formed fails to distinguish the claimed invention from the patented structure of KONRAD. In addition, it is noted that the specification as filed, refers to the claimed electroplated nickel as merely one example of the many reflective inner surfaces 28 that could be used in the claimed invention, without stating that electroplated nickel solves any problem or is for a particular reason.

19. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over KONRAD (U.S. Pat. 5,347,741) in view of GORMAN, JR. et al. (U.S. Pat. 5,967,638).

20. KONRAD discloses an illuminated fishing pole having:

- **a translucent rod (as recited in Claim 3), Figure 3, reference number 10;**
- **the rod including a base (as recited in Claim 3), Figure 3, reference number 28;**
- **the rod including a tip end (as recited in Claim 3), Figure 3, reference number 20;**
- **the rod having a hollow core (as recited in Claim 3), Figure 3, reference number 16;**

- **a light source (as recited in Claim 3), Figure 4, reference number 60;**
- **the light source being located generally within the hollow core (as recited in Claim 3), as seen in Figure 3;**
- **the light source being located substantially near one end of the hollow core (as recited in Claim 3), as seen in Figure 3; and**
- **the light source being positioned in such a way as to direct light waves toward the opposite end of the hollow core (as recited in Claim 3), as evidenced by Figure 3.**

21. KONRAD discloses all the limitations of the claims, except a coating of phosphor being applied to the surface of the hollow core (as recited in Claim 13).

22. GORMAN, JR. et al. discloses an illumination device having:

- **a rod (as recited in Claim 3), Figure 2, reference number 22;**
- **the rod being translucent (as recited in Claim 3), column 2, lines 59-63;**
- **the rod including a base (as recited in Claim 3), as seen in Figure 2;**
- **the rod including a tip end (as recited in Claim 3), Figure 2, reference number 20;**
- **the rod having a hollow core (as recited in Claim 3), Figure 2, reference number 24;**



- **a light source (as recited in Claim 3), Figure 2, reference number 34;**
- **the light source being located substantially near one end of the hollow core (as recited in Claim 3), as seen in Figure 2; and**
- **the light source being positioned in such a way as to direct light waves toward the opposite end of the hollow core (as recited in Claim 3), as evidenced by Figure 2; and**
- **the rod including a phosphor layer (as recited in Claim 13), column 2, lines 63-67.**

23. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to include the phosphor coating of GORMAN, JR. et al. in the rod of KONRAD to provide the patented fishing pole with means for emitting a dull glow for an extended period of time, as per the teachings of GORMAN, JR. et al..

#### ***Relevant Prior Art***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Chack** (U.S. Pat. 2,264,198), **Flores** (U.S. Pat. 4,048,631), **Wang** (U.S. Pat. 5,142,464), **McDermott** (U.S. Pat. 6,024,471) and **Nelson et al.** (U.S. Pat. 6,957,897)

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disclose portable illumination devices including potentiometers for adjusting the brightness level of a light source.

**Porta** (U.S. Pat. 3,197,757), **Joyce et al.** (U.S. Pat. 4,231,077), **Harris, Jr.** (U.S. Pat. 5,392,203), **Zorn et al.** (U.S. Pat. 5,799,124), **Ford et al.** (U.S. Pat. 5,980,063), **Campman** (U.S. Pat. 6,213,623) and **Herold** (U.S. Pat. 6,726,350) disclose illumination devices including a hollow light guide, a power source, and a light source electrically connected to the power source and positioned to project light into the hollow light guide.

**Romberger** (U.S. Pat. 2,616,202), **Seibert et al.** (U.S. Pat. 4,775,920), **Aragon, Jr.** (U.S. Pat. 5,182,873), **Cota et al.** (U.S. Pat. 5,357,410), **Sparks** (U.S. Pat. 5,738,433), **Hansen** (U.S. Pat. 6,000,808) and **Wiggins** (U.S. Pat. 6,149,286) disclose illuminated fishing rods.

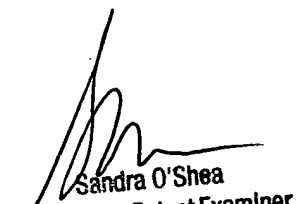
### ***Conclusion***

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negron whose telephone number is (571) 272-2376. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea, can be reached on (571) 272-2378. The facsimile machine number for the Art Group is (571) 273-8300.

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26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, go to <http://pair-direct.uspto.gov>. Should you have questions on access to Private PAIR system, contact the Electronic Business Center (EBC) toll-free at 866-217-9197.



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